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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Jose Luis Diaz

Notice of Decision

On May 15, 2014, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: May 22, 2014



Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board

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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of the Claim of:

Proposed Decision

10 **Jose Luis Diaz**

(Penal Code § 4900 et seq.)

11 **Introduction**
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13 This claim for compensation as an erroneously convicted person was decided based on the
14 written record by considering all the evidence submitted to date and without the necessity of a
15 telephonic or in-person hearing. James Reilmiller was assigned to hear this matter by the Executive
16 Officer of the California Victim Compensation and Government Claims Board. Mr. Diaz (Claimant)
17 was represented by M. Gerald Schwartzbach, attorney at law. The California Department of Justice,
18 Office of the Attorney General (AG), was represented by Michael P. Farrell.

19 After considering all the evidence, it is determined that the Claimant has proven by a
20 preponderance of the evidence that he did not commit the crime with which he was charged. It is
21 also determined the Claimant has proven by a preponderance of the evidence that he sustained
22 pecuniary injury as a result of this conviction. Therefore, it is recommended that Claimant receive
23 compensation pursuant to Penal Code section 4900 et seq. in the amount of \$305,300.

24 **Arrest and Conviction**

25 On October 17, 1983, Diane V. was waiting at a local high school for a ride home when a
26 perpetrator, allegedly the Claimant, approached her, put a knife to her throat, and forced her to the
27 back of the school. While behind the school, the perpetrator pushed Diane V. to the ground, removed
28 her clothing, and attempted to engage in sexual intercourse. After approximately 20 minutes the

1 perpetrator left the scene having failed to have sexual intercourse with Diane V. because he was
2 unable to achieve an erection.

3 On April 1, 1984, Barbara D. was jogging near the same high school where the 1983 crime
4 occurred when a perpetrator, allegedly the Claimant, approached her and held a knife to her throat.
5 The perpetrator forced Barbara D. to the ground and removed her clothing. He then placed his fingers
6 in her anus and vagina, orally copulated her anus and vagina, and after he achieved an erection,
7 penetrated her vagina. Approximately 30 seconds later, the perpetrator stood up and walked away
8 from the scene. Shortly thereafter, two joggers arrived at the scene. Barbara D. told them what
9 happened and the joggers observed and ran after the perpetrator.

10 On October 26, 1984, the Claimant was found guilty of the attempted rape of Diane V. and
11 guilty of three counts of penetration with a foreign object, one count of oral copulation, and one count
12 of rape as to Barbara D. Further, the jury found the Claimant used a deadly weapon as to all the
13 counts. During the trial both victims identified the Claimant as the perpetrator of the charged offenses.
14 In addition, one of the joggers testified that the Claimant was the perpetrator he pursued immediately
15 after the sexual assault of Barbara D. The Superior Court sentenced the Claimant to 15 years in state
16 prison.

17 **Post Conviction and Penal Code Section 4900 Claim**

18 On March 6, 1993, after serving 3,053 days, the Claimant was released from prison. On
19 March 6, 1996, he was released from parole. On September 6, 2012, the Claimant and the Santa
20 Clara District Attorney's Office filed a Petition for Writ of Habeas Corpus in Superior Court based upon
21 new evidence in the case that pointed unerringly to Claimant's Innocence. Specifically, there were 28
22 unsolved rapes in Santa Clara County between 1982 and 1987. There was no one suspect for all of
23 these rapes. However, DNA analysis was performed on nine of the unsolved rapes and in eight of
24 them, the physical evidence pointed to one unidentified suspect and one came back to a different
25 unidentified suspect. No DNA testing of the unsolved rapes pointed to the Claimant. In both cases
26 where the Claimant was convicted, there was no DNA evidence tying him to the victims. Two new
27 composite sketches of the suspect were created with input from other rape victims. The suspect in the
28 new sketches only shared a few physical characteristics with the Claimant. Barbara D. stated that the

1 new composite sketch of the suspect looked more like her attacker than the Claimant did. Additionally,
2 Barbara D. stated her attacker had acne (which the Claimant did not) and was taller and heavier than
3 the Claimant. In addition, some of the unsolved attacks occurred near a school, involved knives held at
4 the victim's throat, and the suspect had difficulty achieving an erection. Therefore, based upon these
5 new facts, the District Attorney of Santa Clara at the hearing on the petition stated that, "in all
6 likelihood Mr. Diaz had not committed these crimes" and "all the new evidence that we had discovered
7 did point towards his innocence." After the District Attorney's statements, and based upon the above
8 mentioned facts, the Superior Court signed an order that stated, "conclusive evidence now
9 undermines the entire prosecution case, pointing unerringly to innocence" and, on September 6, 2012,
10 the court granted the Writ.

11 Claimant then filed his application for compensation as an erroneously convicted person on
12 November 15, 2012. He claimed that he was erroneously convicted because he did not commit the
13 crimes for which he was charged. He also claimed that he had suffered pecuniary injury because he
14 lost educational and career opportunities while he was in prison as prior to his conviction he had two
15 jobs and he had intended to study medicine. Furthermore, upon his release from prison, his
16 employment opportunities were limited by his status as a convicted felon and registered sex offender.

17 Because this claim was filed more than 16 years after his discharge from parole and more than
18 19 years after his release from prison, it was determined to be untimely and thus not eligible for
19 compensation.¹ The claimant then filed a Writ of Mandate and the Superior Court ruled on March 4,
20 2014, the claim was timely filed based on the date of the Habeas Corpus decision. The court also
21 ruled that a hearing before the Board was not necessary because the claimant obtained a finding in
22 the Petition for Writ of Habeas Corpus that there was conclusive evidence that undermined the entire
23 prosecution case and that the evidence pointed unerringly to Innocence. The court issued an order
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27 ¹ A claim for compensation is required to be presented by the Claimant to the California Victim
28 Compensation and Government Claims Board within a period of two years after judgment of acquittal or
after pardon granted, or after release from custody.

1 directing that the Board recommend to the Legislature, without the necessity of a hearing, that an
2 appropriation be made to compensate the claimant for the time he was erroneously incarcerated.²

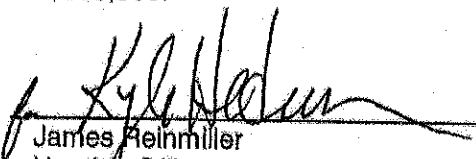
3 **Determination of Issues**

4 Whenever a person is convicted of a charge and the conviction is set aside and that person
5 has secured a declaration of factual innocence from the court pursuant to Section 851.86, the finding
6 shall be sufficient grounds for payment of compensation for a claim made pursuant to Section 4900.
7 Upon application by the person, the California Victim Compensation and Government Claims Board
8 shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim
9 paid pursuant to Section 4904.³

10 In this instance, the Claimant secured a declaration of factual innocence from the court
11 pursuant to Section 851.86 on September 6, 2012. Specifically, the Superior Court granted the
12 Claimant's Petition for Writ of Habeas Corpus finding that new and conclusive evidence undermined
13 the entire prosecution case against the Claimant and pointed unerringly to the Claimant's innocence.

14 Further, on March 4, 2014, the court granted the Claimant's Petition for Writ of Mandate that
15 orders the Victim Compensation and Government Claims Board to comply with Penal Code section
16 851.865(a). In addition, sufficient evidence has been submitted to support a finding that the Claimant
17 suffered pecuniary injury as a result of his erroneous conviction because at the time of his arrest the
18 Claimant was employed at a plastics company as well as an assistant boxing coach. Claimant was
19 incarcerated for 3,053 days. It is recommended to the Legislature that an appropriation be made to
20 pay the claim of Jose Luis Diaz in the sum of \$305,300.

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22 Date: April 14, 2014

23 
24 James Reinmiller
25 Hearing Officer
26 California Victim Compensation and
27 Government Claims Board

28 ² Penal Code section 851.865.

³ Pen. Code, § 851.865(a).